

Montana Water Court  
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**FILED**  
02/03/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
39E-0503-R-2021  
Block, Nathaniel  
9.00

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
BOX ELDER CREEK BASIN (39E)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: O'Connor Ranch Lands LLC

**CASE 39E-0503-R-2021**

39E 172906-00

39E 172907-00

39E 172967-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

### FINDINGS OF FACT

1. The above-captioned claims appeared in the Preliminary Decree for Box Elder Creek (Basin 39E) with issue remarks.
2. On December 16, 2021, the above-captioned claims were consolidated into Water Court Case 39E-0503-R-2021 and a status conference was set. The conference was held on January 19, 2022, Dave Wolff appeared on behalf of the Wolff Ranch, Wayne Yost and Jeff Elmore were both in attendance. No other party appeared at the conference.
3. On February 17, 2022, Jeff Elmore, Martha Elmore, and the Wolff Ranch filed a Proposed Resolution. The filing detailed several modifications that would resolve the issues with the claims and provided evidence for the requested modifications, including a Department of Natural Resources and Conservation ("DNRC") Memo supporting the modifications. The potential owners have received notice during proceedings in case 39E-0066-R-2021 and have either declined to participate or requested to be included on the service list to monitor proceedings.
4. Pursuant to the Proposed Resolution and the Memo, claim 39E 172906-00 should be modified as follows:

Point of Diversion:

<u>ID</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	SESENE	30	1S	<del>58E</del>	Carter
<b><u>59E</u></b>					

Reservoir:

<u>ID</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	SESENE	30	1S	<del>58E</del>	Carter
<b><u>59E</u></b>					

Place of Use:

<u>ID</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	E2NESE	30	1S	<del>58E</del>	Carter
<b><u>59E</u></b>					

5. Pursuant to the Proposed Resolution and the Memo, claim 39E 172907-00 should be modified as follows:

Point of Diversion:

<u>ID</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	<del>N</del> W <del>N</del> E <del>N</del> W	30	1S	<del>58</del> E	Carter
	<u>SE</u> NENW			<u>59</u> E	

Reservoir:

<u>ID</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	<del>N</del> W <del>N</del> E <del>N</del> W	30	1S	<del>58</del> E	Carter
	<u>SE</u> NENW			<u>59</u> E	

Place of Use:

<u>ID</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	E2NENW	30	1S	<del>58</del> E	Carter
				<u>59</u> E	

6. The Proposed Resolution discussed the issue remark on claim 39E 172967-00 and provided evidence that resolved the remark. The remark should be removed accordingly.
7. Modifying claims 39E 172906-00 and 39E 172907-00 as discussed above resolves the issue remarks appearing on the claims.
8. If the claimant or a potential owner disagrees with the modifications discussed above they may file objections to this Report as discussed above.

## PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.
3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS 17, \*6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v.*

*Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, \*6. It is within the power of this Court to terminate a water right claim if a claimant fails to participate. Rule 22. W.R.Adj.R. .

### **CONCLUSIONS OF LAW**

1. The claimant has failed to participate meaningfully in this case, despite being given opportunity to do so. *See Order Consolidating Case and Order Setting Status Conference*, December 16, 2021; *Minutes and Order Setting Filing Deadline*, January 21, 2022; *Order Setting Filing Deadline*, March 28, 2022; *Order Setting Filing Deadline*, July 15, 2022. Accordingly, the record supports the adoption of the modifications discussed above as a sanction for failing to comply with this Court's previous Orders and to resolve the issue remarks to the claims.

### **RECOMMENDATIONS**

1. Upon review the record in this case, the above-captioned claims should be modified as discussed above. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

O'Connor Ranch Lands LLC  
203 Kim Curry Road  
Ekalaka, MT 59324

**Potential Owner:**

Jeremy J. Dietz  
2234 AHA NIU Place  
Honolulu, HI 96821

**Potential Owner:**

Wolff Ranch Inc.  
1751 Highway 323  
Ekalaka, MT 59324-8704

**Service via Electronic Mail:**

Eve McDonald, Attorney  
US Dept of Justice-ENRD  
999 18<sup>th</sup> Street, South Terrace Suite 370  
Denver, CO 80202  
(303) 844-1381  
[evelyn.mcdonald@usdoj.gov](mailto:evelyn.mcdonald@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BOXELDER CREEK**  
**BASIN 39E**

**Water Right Number:** 39E 172906-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** O'CONNOR RANCH LANDS LLC  
203 KIM CURRY RD  
EKALAKA, MT 59324 8705

**Priority Date:** DECEMBER 31, 1951

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF BUFFALO CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENE	30	1S	59E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENESE	30	1S	59E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2NESE	30	1S	59E	CARTER

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BOXELDER CREEK**  
**BASIN 39E**

**Water Right Number:** 39E 172907-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** O'CONNOR RANCH LANDS LLC  
203 KIM CURRY RD  
EKALAKA, MT 59324 8705

**Priority Date:** DECEMBER 31, 1938

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF BUFFALO CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENENW	30	1S	59E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENENW	30	1S	59E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2NENW	30	1S	59E	CARTER

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BOXELDER CREEK  
BASIN 39E**

**Water Right Number:** 39E 172967-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** O'CONNOR RANCH LANDS LLC  
203 KIM CURRY RD  
EKALAKA, MT 59324 8705

**Priority Date:** DECEMBER 31, 1957

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 260.00 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**\*Maximum Acres:** 124.00

**Source Name:** BOXELDER CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	12	2S	59E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIVERSION DAM

**Period of Use:** JANUARY 1 TO DECEMBER 31

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	34.00		SENE	14	2S	59E	CARTER
2	20.00		SWNE	14	2S	59E	CARTER
3	1.00		SESENW	14	2S	59E	CARTER
4	18.00		NWSE	14	2S	59E	CARTER
5	30.00		SESE	14	2S	59E	CARTER
6	3.00		W2SWSW	13	2S	59E	CARTER
7	18.00		NENE	23	2S	59E	CARTER

**Total:** 124.00